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U.S. House Judiciary Committee holds hearing on sales taxes in e-commerce

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The U.S. House Judiciary Committee held an [oversight hearing](#) November 30, 2011 on the constitutional limitations on states' authority to collect sales taxes in e-commerce. The hearing was set as Congress considers three remote sales tax proposals: the Main Street Fairness Act (S. 1452 and H.R. 2701), the Marketplace Equity Act (H.R. 3179), and the Marketplace Fairness Act (S. 1832) ([click here](#) for a summary of these proposals). The standing-room only hearing, which lasted nearly three hours, reflected increased interest in these proposals and hopes that a "breakthrough" could be reached after years of effort.

In his opening statement, Judiciary Committee Chairman Lamar Smith (R-TX) stated that the purpose of the hearing was to explore two issues -- whether Congress should exercise its Commerce Clause power to enact sales tax reform legislation and, if so, how Congress can act in a manner so as to "not increase administrative and compliance burdens on America's small businesses." After hearing testimony from the witnesses, Chairman Smith commented that it likely *was* appropriate for Congress to aid in sales tax collection reform; however, whether Congress should act depends on the costs to small businesses and the potential undue burden to interstate commerce.

A wide range of viewpoints was expressed among the witnesses, reflective of their varying interests in the remote sales tax collection issue. However, there was general agreement among both witnesses and committee members that there should be a



level playing field between retailers operating brick-and-mortar, brick-and-click, and online-only businesses. Much of the disagreement involved on how small sellers should be treated, who qualifies as a small seller, and whether a carve-out for small sellers perpetuates an unlevel playing field or relieves such sellers from a disproportionate compliance burden.

In addition to avoiding picking winners and losers in the marketplace, another major theme in the hearing was the desire to protect states' rights, as expressed by two Republican witnesses: Representative John Otto, member of the Texas House of Representatives, and Indiana State Senator Luke Kenley, President of the Streamlined Sales Tax Governing Board. Increasingly, the desire to protect the rights of the states by "respecting federalism" has provided the basis for Republican participation on this issue in Congress.

Patrick Byrne, Chairman and CEO of Overstock.com, Inc., expressed opposition to the currently proposed remote sales tax collection proposals as "legislation that creates insurmountable hurdles for new entrants and ideas." Instead, Byrne referenced a draft bill prepared by Overstock and attached to his written testimony. Byrne argued that any federal proposal should ensure: (1) that states are required to provide a "truly plug-and-play affordable software solution" for compliance with sales tax obligations for online sales; (2) immunity from liability if errors arise from the use of such software solutions; and (3) compensation to online retailers for expenses associated with collecting the sales tax.

During the hearing, representatives from eBay, Inc., and Amazon.com, Inc., disagreed over the small business exception included in the legislative proposals. However, they did agree that Congress should act on remote sales tax legislation in some form.

PwC Observes

"The fact that the House Judiciary Committee held an oversight hearing on this issue is not momentous news in itself," observes Ferdinand Hogroian, Washington National Tax Services Director with PwC in Washington, DC. "In fact, bill introductions and hearings haven't been a problem for remote sales tax collection proponents to date. The challenge has been to generate significant 'traction' in the Congress such to overcome long-standing objections to 'taxing the Internet.' This hearing represents the fruits of intense efforts to court Republican support by appealing to notions of competition and federalism. As demonstrated in the hearing, however, continued momentum will hinge on a bipartisan solution addressing the impact of a remote sales tax collection mandate on small businesses. This issue has stymied efforts to enact similar proposals in prior years, and solving this issue invokes long-standing concerns about the cost to retailers of sales tax collection and the sufficiency of sales tax simplification approaches."

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